Standards for Obtaining a Warrant Debated

Senate Liberals Attack Wiretap Bill

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The Carter administration's proposal for legislation governing wiretapping in foreign intelligence cases came under fire yesterday from Senate liberals who expressed concern about whether it adequately protects civil liberties.

Leading the chorus of criticism was Sen. Edward M. Kennedy (D-Mass.), who sponsored the bill in the Senate. However, Kennedy said at a hearing of the Subcommittee on Criminal Laws and Procedures that he has "serious reservations" about some of the bill's provisions and would like to see them changed.

There is broad agreement on the bill's main purpose. It would end the long controversy about whether Presidents have the right under their "inherent constitutional powers" to authorize electronic surveillance in foreign intelligence casse by making such surveillance dependent on a warrant issued by an authorized federal judge.

At yesterday's hearing, though, Kennedy and Sen. James Abourezk (S-S.D.) engaged in a long and inconclusive exchange with Attorney General Griffin B. Bell about what kind of "probable-cause" showing the Justice Department should have to make in applying for a warrant.

In its present form, the proposed legislation sets up two standards for obtaining a warrant. One is a criminal standard alleging that the target of the proposed surveillance is engaging in espionage, sabotage or terrorist activities that violate U.S. laws; the other is a lesser standard alleging only that the target is involved in clandestine activities likely to harm the security of the United States.

Kennedy and Abourezk, echoing an opinion widely held by Senate liberals ,argued that the "probable-cause" provisions in the bill should be narrowed to require a showing that an actual crime is involved.

Bell, backed by FBI Director Clarence M. Kelley, stood firm in insisting that the lesser standerd should be included in the law. The Justice Department contends that this is necessary because the espionage laws, which basically date from 1916, do not define as crimes certain contemporary situations that affect national security.

Bell cited as a hypothetical example the possibility of someone stealing sophisticated American computer technology on behalf of a foreign power. In defining crime, the espionage laws refer to "national defense information"; Bell noted that, unless the computer technology had a clearly military use, it would not be possible to obtain a warrant in such a case if the Justice Department had to demonstrate that a crime was being committed.

Kennedy and Abourezk also objected to provisions in the bill that would allow easier surveillance of foreign visitors to the United States than of U.S. citizens or aliens with permanent residence status.

In particular, they objected to a provision that would allow the government, on obtaining a warrant for electronic surveillance of a foreign visitor, to maintain the surveillance for a year before renewing the warrant.

Bell and Kelley replied that a major source of foreign intelligence activity originates with foreigners who come to the United States in the guise of diplomats, students, seamen or tourists.

In a statement submitted to the subcommittee, Kelley said that "as of June 9, 1977, there were only 77 subjects of telephone and three subjects of microphone surveillances in operaiton in FBI cases" involving foreign intelligence. He added: "None of these subjects were U.S. citizens."